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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ELENO FERNANDEZ GARCIA,

Defendants.

Case No. 1:20-CR-00138-NONE-SKO

**DEFENDANT ELENO FERNANDEZ
GARCIA'S SENTENCING
MEMORANDUM**

I.

CASE STATUS

The defendant, Eleno Fernandez Garcia, entered a plea of guilty on May 13, 2021, to Count I in the Indictment, to wit, Conspiracy to Manufacture, Distribute and Possess with the Intent to Distribute Marijuana. Since the date of his arrest on August 6, 2020, he has remained in custody at the Fresno County Jail. USPO Jesse Mora, upon reviewing all aspects of this case and speaking with the defendant in the course of preparing the PSI (Dkt. 28), he assessed the OL at 27 with a CHC of III. The recommendation is 70 months. In his PSI, USPO Mora writes:

"The defendant meets the criteria for the "safety valve" as expanded by the First Step Act; however, because the sentencing guidelines specifically, USSG §5C1.2(a), have not been amended accordingly, the defendant is not eligible for a two-level reduction under USSG

1 §2D1.1(b)(18). As such, a two-level downward variance from the advisory guideline range is
2 recommended.” (PSI, pg. 4)

3 The Government filed a sentencing memorandum stating:

4 “Pursuant to the plea agreement, the United States of America agreed to recommend a
5 low-end Guidelines sentence in this matter.

6 Here, the Guidelines have not been amended to reflect the First Step Act’s amendments to
7 the safety valve. The probation officer therefore recommends a two-level downward variance,
8 resulting in a Guidelines range of 70 to 87 months. If the Court is inclined to follow the probation
9 officer’s recommendation, the government asks the Court to follow the recommendation only if
10 the defendant agrees to refrain from seeking an additional two-level reduction if and when the
11 Sentencing Commission amends the Guidelines in accordance with the First Step Act.”

12 (Dkt. 29, ¶1)

13 The defense has researched the application of USSG §5C1.2(a) and the Ninth Circuit
14 opinion, *U.S. v. Lopez*, No. 19-50305, 2021 WL 2024540 (9th Cir. May 21, 2021), which
15 discusses the applicability of the “safety valve” criteria under the First Step Act, which is an
16 important decision for the application of the “safety valve” criteria in minimum mandatory cases.¹

17 As such, the defense is in accord with the comment by USPO Mora (PSI, pg. 4) and does
18 not believe the defendant is under any obligation to refrain from seeking an additional two-level
19 reduction when the Act is amended. Moreover, apart from this issue, the defendant does believe
20 the Court may consider further reduction in sentence based upon 18 USC §3553(a) factors. set
21 forth, below.

22 II.

23 **GIVEN THE NATURE AND CIRCUMSTANCES OF MR. GARCIA’S OFFENSE**
24 **AND HIS HISTORY AND CHARACTERISTICS, THE SENTENCE REQUESTED**
25 **IS SUFFICIENT, BUT NOT GREATER THAN NECESSARY, TO SATISFY THE**
26 **PURPOSE OF SENTENCING**

27 A. A SENTENCE REDUCTION IS APPROPRIATE

28 ¹ See, PSI, page 20, ¶¶ 86,87,88

As noted in the offense report, Mr. Garcia was forced to leave school after completing the 6th grade, and as noted in the PSI, he does not know how to read or write (PSI ¶60) When speaking with Mr. Garcia, it obvious that he has difficulty in understanding issues of common knowledge, for example, prior to his arrest, he was told, and believed that it is legal to grow large marijuana gardens in the state of California. While state law allows for marijuana grows, he had difficulty grasping why he is being prosecuted by the federal government. While this does not justify nor vindicate Mr. Garcia's actions on August 6, 2020, it is pointed as indicative of his naivete. Apart from this, Mr. Garcia been attempting to straighten out his life. According to Mr. Garcia, he quit drinking alcohol around 2017 because of his 2016 arrest for DUI. Prior to his arrest, Mr. Garcia was unemployed, however, previously he was gainfully employed as a laborer earning minimum wage during the day and as a musician on the weekends in a band called, El Rante del Tierra Caliente." At the time he became involved in the marijuana grow, he was unemployed and needed money to provide for his wife and five children. Regrettably, he chose the wrong type of employment to engage in, and he is extremely remorseful for his decision. Mr. Garcia will make a statement in allocution at the time of sentencing.

III.

CONCLUSION

Based upon the foregoing, the court is asked to consider a further reduction in sentencing.

Respectfully Submitted,

DATED: August 6, 2021

/s/ David A Torres
DAVID A. TORRES
Attorney for Defendant
Eleno Fernandez Garcia